United States Bankruptcy Court
District of South Carolina

Case Number: 16−05063−jw   Chapter: 13

In re:
Alluette K Jones

Entered By The Court
10/4/16

ORDER REGARDING PROCEDURES FOR LOSS MITIGATION/MORTGAGE MODIFICATION

Filed By The Court
10/4/16
Laura A. Austin
Clerk of Court
US Bankruptcy Court

PLEASE TAKE NOTICE: All loss mitigation/mortgage modification[1] ("LM/MM") agreed to during a bankruptcy case before the undersigned must be approved by this Court using the procedures set forth in Judge Waites' Chambers Guidelines. These procedures are intended to facilitate LM/MM which may be otherwise required under applicable non−bankruptcy law or offered by the mortgage creditor ("Mortgage Creditor").[2] **It is therefore ORDERED:**

I. Initial Limited Relief from the Automatic Stay is Granted for LM/MM

As a means of facilitating LM/MM, the Mortgage Creditor is hereby granted limited relief from stay to initiate or respond to communications regarding loss mitigation or mortgage modification, upon the following conditions: (1) the Mortgage Creditor shall advise the Court and Debtor(s)' Counsel of the commencement of LM/MM discussions within 14 days of initiation through the filing of correspondence by its counsel and by providing to Debtor(s)' Counsel copies of any LM/MM communications exchanged between the Mortgage Creditor and Debtor(s), and (2) the parties shall seek Court approval of any LM/MM agreement **before** payment is required under a trial period plan and **before** entering into any final agreement.[3]

II. Mortgage Creditor's Duty to Notify Court and Debtor(s)' Counsel

To the extent that the Mortgage Creditor's policies, procedures, servicing guidelines or investor guidelines would consider Debtor(s) ineligible for a mortgage modification for reasons unrelated to a review of the Debtor(s) current financial information,[4] the Mortgage Creditor shall advise the Court and Debtor(s)' Counsel of all such circumstances by written correspondence within 14 days of the entry of this Order. **A Mortgage Creditor's failure to comply with the aforesaid requirements may be considered by the Court to be a violation of this Order and/or subject the Mortgage Creditor and its related agents to damages, further order or sanctions, including any costs or attorney's fees incurred by Debtor(s) related to LM/MM.**

III. LM/MM through Portal is Preferred Method

LM/MM consideration conducted according to Chambers Guidelines through the LM/MM Portal, available at https://www.dclmwp.com, is preferred by Judge Waites because it reduces disputes by enabling parties interested in LM/MM to more quickly communicate and exchange all necessary documentation in a secure and transparent online environment while preserving the record of communication and documents exchanged and establishing deadlines for completion of the review. Disputes or delays occurring during LM/MM under the Portal may be addressed by the Court upon the request of any party, thus ensuring its timely conclusion.

IV. Non−portal Procedures

Debtor(s) shall immediately advise Debtor(s)' Counsel, whether before or after plan confirmation, of any non−portal LM/MM discussions with a Mortgage Creditor. As a prerequisite to the Court's approval of non−portal LM/MM, the Debtor(s)' plan must provide for the Mortgage Creditor to be paid directly by the Debtor(s) (with no payments made to the Mortgage Creditor through the Trustee). As a further condition for approval of a non−portal LM/MM agreements, the Court will grant relief from the automatic stay as to the affected Mortgage Creditor, upon submission of a proposed order by such Mortgage Creditor, to allow any subsequent dispute to be resolved in a non−bankruptcy court.[5] **Parties electing to seek LM/MM outside the Portal bear all risks.**

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1 The term "loss mitigation" is intended to describe the full range of solutions that may avert the loss of a debtor's home to foreclosure, promote communication between parties, and reduce costs; for example, loan modification or refinance, debt−forgiveness, debt postponement, forbearance, short sale or surrender of property in satisfaction of debt.

2 **The Mortgage Creditor referred to herein shall include the owner, servicer, investor, and any agents thereof, and any other party with the authority to establish or modify the policies and procedures regarding the loss mitigation review of the mortgage loan identified by Debtor(s); and therefore, this Order and Chambers Guidelines are binding on all of these entities/parties.**

3 Form Orders Granting Approval of Trial Period Plan and Approving Loss Mitigation/Mortgage Modification are provided in Chambers Guidelines, available on the Court's web site at http://www.scb.uscourts.gov/ChambersJW.htm.

4 Such loss mitigation policies or procedures include any and all requirements that summarily deny Debtor(s) eligibility to a mortgage modification without a good faith review of the Debtor(s)' current financial information, including but not limited to investor guidelines, agreements in which the investor has not given its agent contractual authority to modify the mortgage, policies that the Mortgage Creditor does not offer mortgage modifications to such borrowers, policies that Mortgage Creditor will not consider such borrowers for mortgage modifications due to a prior or pending bankruptcy case; and policies that such borrowers are ineligible for mortgage modifications due to the date the mortgage loan was originated.

5 Unless otherwise ordered, the automatic stay shall remain effective as to all other lienholders.

V. Service of this Order

Debtor(s)' Counsel is ordered to serve a copy of this Order on all applicable Mortgage Creditors within 5 days after the entry of this Order and file a certificate of service within 3 days thereafter. If Debtor(s) is proceeding without the assistance of counsel, Debtor(s) is ordered to serve a copy of this Order on all applicable Mortgage Creditors within 5 days after the entry of this Order and file a certificate of service within 3 days thereafter.

AND IT IS SO ORDERED

John E Waites

United States Bankruptcy Judge